

REMARKS

This amendment is submitted in response to the Office action mailed on June 30, 2004. Claims 1-24 are currently under examination in this case.

Claims 10 and 11 stand rejected under 35 U.S.C. 112 as being indefinite for lacking antecedent support. Claim 6 has been amended by adding the phrase "emulsion comprising an" to provide antecedent support for Claims 10 and 11. Support for the amendment can be found on page 10, lines 20-24 wherein an emulsion containing triclosan, lecithin and CPC (cetyl pyridinium chloride) is disclosed.

Claims 1-5, 15, 19-21 and 23 stand rejected under 35 U.S.C. 102(b) as anticipated by WO 95/17159. The Office action took the position that WO 95/17159 discloses antiplaque emulsions for mouthwashes comprising flavoring oils, and the water-insoluble, non-cationic antimicrobial triclosan, the antimicrobial cationic surfactant cetylpyridinium chloride, and water. According to the Office action cetylpyridinium chloride simultaneously acts as both an emulsifier and surfactant.

Of the rejected claims only Claims 1 and 15 are independent. Applicants submit that WO 95/17159 does not anticipate Claims 1 and 15 because it fails to disclose or suggest an antiplaque emulsion that is a mixture comprising three distinct compounds comprising an emulsifier, triclosan; and a surfactant. The WO 95/17159 mixture of cetylpyridinium chloride, which serves as both an emulsifier and surfactant, and triclosan does not disclose nor does it suggest the use of three distinct compounds as in the present invention. Thus, Applicants submit that WO 95/17159 does not anticipate or make obvious independent Claim 1, its dependent Claims 2-5 or independent Claim 15 and its dependent Claims 19-21 and 23. Applicants respectfully request that this rejection be withdrawn.

Claims 1, 3-5, 15-18, 20, 21, 24 were rejected under 35 U.S.C. 102(b) as anticipated by Reed et al (5,032,385) and Claims 15 and 22 were rejected as obvious. The Office action took the position that Reed itself teaches triclosan in an amount of up to two percent by weight, a surfactant in the required amounts, water and solvents and may be in the form of a chewing gum. Reed also allegedly discloses in its discussion of prior art, surfactant and water, which partition into a hydrophilic phase and a surfactant micellar phase which are emulsions.

Reed's view of the prior art, even if accurate, fails to indicate that the emulsions are a mixture comprising three distinct compounds comprising an emulsifier, triclosan; and a surfactant. Further, Reed teaches that emulsions make antimicrobials unavailable (Col. 1, lines 12-27) and teaches the use of polyethylene glycol in their place (Col. 1, lines 28-34). Thus, neither the teaching of Reed nor its discussion of the prior art, disclose an emulsion of a mixture comprising three distinct compounds comprising an emulsifier, triclosan; and a surfactant and therefore does not anticipate Claim 1. Applicant submits that because Reed teaches against the use of emulsions in the preparation of its antimicrobial formulations Claims 1 and 15 are not made obvious by Reed. For these reasons the Applicant submits that independent Claims 1 or 15 are patentable over Reed. Similarly, Applicant submits that Claims 3-5, 16-18, 20, 21, 24 which contain all of the limitations of Claims 1 and 15 from which they depend are patentable, at least for the same reasons.

Claims 1, 6-8, 12-18 and 22 were rejected under 35 U.S.C. 102(b) as anticipated by Hill. The Office action took the position that Hill discloses antiplaque chewing gums comprising a water insoluble chewing gum base portion and a water soluble therapeutic portion containing an emulsion coating that can contain therapeutic agents including triclosan. The Office action indicates that Hill discloses the combination of certain surfactants and/or emulsifiers.

Of the rejected claims, Claims 1, 6, and 15 are independent. Hill fails to disclose a mixture comprising three distinct compounds comprising an emulsifier, and a surfactant, specifically, in combination with triclosan and therefore can not anticipate independent Claims 1, 6 and 15 nor their rejected dependent Claims 7-8, 12-14, 16-18 and 22. Moreover, Hill fails to provide any motivation for that combination. Although the Office action indicates that Hill discloses the combination of certain surfactants and/or emulsifiers at Col. 13 line 49. The referenced passage is limited to such mixtures as being advantageous when used in combination with polydimethyl siloxanes for use in coating teeth and oral surfaces to form smooth surfaces that interfere with plaque adherence. It is not apparent from this passage that there would be any advantage to the use of the same mixtures with chemically distinct compounds, such as triclosan (a derivatized diphenylether compound), so as to provide any motivation for the combination of an emulsifier and a chemically distinct surfactant with triclosan as in Applicants' invention. For these reasons Applicant respectfully requests that the rejection be reconsidered and withdrawn.

Claims 9-11 were rejected under 35 U.S.C. 103(a) as unpatentable over Hill in view of WO 95/17159, Claim 6 was also rejected in so far as Claims 9-11 depend from it. Applicant submits that Claim 6 is patentable over the combination of Hill with WO 95/17159 for the reasons set forth above with respect to Hill. Namely, Hill does not disclose a mixture of three compounds comprising an emulsifier and a surfactant in combination with triclosan. WO 95/17159 provides no more suggestion than Hill alone for a water soluble portion including an emulsion comprising three distinct compounds comprising an emulsifier, triclosan, and surfactant. Consequently, Claims 9-11 which depend from Claim 6 and therefore contain all of its limitations are also patentable at least for the same reasons as Claim 6.

Claims 1-22 were rejected under the judicially created doctrine of obviousness-type double patenting. Applicants will file a terminal disclaimer at such time as the application is otherwise found allowable provided that the rejection is still warranted.

In light of the foregoing comments, the Applicants respectfully submit that the application is in condition for allowance and request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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